

GRAY ROBINSON

ATTORNEYS AT LAW

Frank A. Rullan

954-761-8111

FRANK.RULLAN@GRAY-ROBINSON.COM

DOCKET FILE COPY ORIGINAL SUITE 1850
401 EAST LAS OLAS BOULEVARD

FORT LAUDERDALE, FL 33301

TEL 954-761-8111

FAX 954-761-8112

gray-robinson.com

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September 24, 2008

VIA FEDERAL EXPRESS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**RE: CC Docket No. 02-33 – Notice of Discontinuance of Common Carrier
Broadband Internet Access Transmission Service**

Dear Ms. Dortch:

On August 29, 2008, Puerto Rico Telephone Company ("PRT") sent you a letter informing of its scheduled discontinuance of its common carrier DSL transmission services in Puerto Rico by October 1, 2008. PRT, however, failed to inform the Commission of all the repercussions and damages that discontinuing such common carrier DSL service will cause in Puerto Rico because of PRT's unreasonable and short notice of the discontinuance of service.

The purpose of this letter is to inform the Commission that our client, Engineering Support Systems, Inc. d/b/a Puerto Rico Webmasters ("PRW"), has filed a complaint against PRT at the Puerto Rico Telecommunications Regulatory Board ("Board") seeking a temporary injunction so that the discontinuance deadline of PRT's common carrier DSL transmission service is delayed until January 1, 2009. Attached please find copies of the PRW complaint and memorandum of law that were filed at the Board. As the Complaint states, PRT not only failed to provide an adequate and reasonable advance notice of its discontinuance of DSL common carrier service but it also intends to illegally take all of PRW's Internet customers in Puerto Rico (without their consent) if PRW is not able to migrate them to another broadband network within the unreasonable 30 day period. Please also note that the Board has already assumed jurisdiction of such Complaint. See Attachment.

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COMMONWEALTH OF PUERTO RICO
PUERTO RICO TELECOMMUNICATIONS REGULATORY BOARD

ENGINEERING SUPPORT SYSTEMS, INC. d/b/a
PUERTO RICO WEBMASTERS,

Plaintiff

v.

PUERTO RICO TELEPHONE COMPANY, INC.,

Defendant.

Complaint No. JRT-2008-Q-0095

Re: EMERGENCY RELIEF AND
PRELIMINARY INJUNCTION

**COMPLAINT FOR
EMERGENCY RELIEF**

TO THE HONORABLE BOARD:

COMES NOW Engineering Support Systems, Inc. d/b/a Puerto Rico WebMasters ("PRW"), by and through its undersigned counsel, and respectfully alleges and prays as follows:

PRELIMINARY STATEMENT

1. This action arises from Puerto Rico Telephone Company, Inc.'s ("PRTC") recent decision to unilaterally terminate on October, 1, 2008, its Digital Subscriber Line ("DSL") transmission common carrier services provided in Puerto Rico.

2. This DSL service termination will result in the effective and unwarranted disconnection of PRW's 1,300 Internet customers, a takeover by PRTC of such 1,300 Internet customers, and the destruction of PRW's goodwill and reputation in Puerto Rico.

3. PRW hereby seeks an emergency order requesting a temporary postponement or temporary injunction prohibiting PRTC from terminating such service for a period of at least

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four (4) months or until January 1, 2009. A four (4) month transition period will allow PRW to properly migrate its Internet clients to another broadband network.

PARTIES

4. PRW is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico and authorized to do business in Puerto Rico. PRW is an Internet Service Provider ("ISP") as well as a de facto agent of PRTC's DSL transmission common carrier services in Puerto Rico. PRW is considered a "channel" seller of PRTC's DSL services in Puerto Rico and is given special access to PRTC's computer systems to enter new DSL clients into PRTC's data bases, among other benefits.

5. Defendant PRTC is a Puerto Rico corporation with its principal place of business located in Caparra Heights, Puerto Rico. PRTC is a telecommunications carrier and the only incumbent local exchange carrier ("ILEC") operating in Puerto Rico. PRTC sells DSL transmission services in Puerto Rico as a common carrier and has DSL tariffs in place. PRTC also pays universal service fees for the DSL transmission common carrier services it sells in Puerto Rico.

JURISDICTION

6. Chapter II, Section 6 of Act 213 of September 12, 1996, Puerto Rico Telecommunications Act ("Act 213"), provides jurisdiction over this complaint: "The Board has jurisdiction over all telecommunications services and over all those persons which render these services in the Commonwealth of Puerto Rico and over any person with a direct or indirect interest in said services or companies."

7. PRTC is currently selling its DSL transmission services in Puerto Rico as telecommunications services as a common carrier. See Exhibit A; Federal Communications

Commission's Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33 and 01-337, released on September 23, 2005, FCC 05-150, ¶¶ 89-95 ("Wireline Broadband Order").

8. After the issuance of the Wireline Broadband Order, PRTC elected to continue selling its DSL transmission services in Puerto Rico as telecommunications services. Id.

9. PRTC pays the applicable universal service fees for its DSL transmission common carrier services.

STATEMENT OF FACTS

10. PRW started providing Internet access services as an ISP in Puerto Rico in April, 1998 to both business and residential customers. PRW currently offers DSL, leased line and dialup connectivity to the Internet. Because transport services are required for its Internet access offerings, PRW maintains multiple relationships with local telecommunications companies.

11. In April, 2004, PRW started a business relationship with PRTC that allows it to provision DSL transport for its customers. Currently PRW has a "channel" code assigned on the PRTC DSL "channels" web site that allows PRW to enter DSL transport orders with PRTC on behalf of its Internet access customers. These orders are typically completed in seven to ten days when the customer receives a DSL modem from PRTC. After the service is activated, PRTC bills the DSL transport to PRW customers directly on their monthly telephone bill. As part of this business arrangement, PRW is also required to pay a DS3 link to the PRTC ATM network at a monthly cost of \$3,996. PRW bills its customers separately for the Internet access service. This "channel" relationship converts PRW into a de facto DSL agent of PRTC because PRW sells and activates for its customers PRTC's DSL transmission services for them to be able to use the PRW Internet access.

12. Recently, PRW received a letter from PRTC dated August 29, 2008, whereby PRTC informs that effective October 1, 2008, PRTC will cease offering to its retail customers DSL access service as a facilities-based wireline broadband Internet access transmission "common carrier." PRTC's letter effectively gave PRW a 30 day notice for the termination of the DSL service it has provided PRW for the past four (4) years.

13. PRTC sent a notification dated August 28, 2008 to approximately 1,300 of PRW's DSL Internet clients ("Notification") informing them that effective October 1, 2008, PRTC will move all DSL accounts to DMAX service and that PRTC will also become its Internet Service Provider ("ISP"). In other words, the notice to PRW's clients implicitly states that PRW will not provide them Internet service anymore and that PRTC is taking over the ISP service. Furthermore, PRTC did not communicate or coordinate with PRW before sending the Notification to PRW's 1,300 Internet clients.

14. On September 2, 2008, PRW wrote a letter to PRTC whereby it objected to the limited and unreasonable timeframe provided for the termination of DSL transport service and the Notification, and requested a meeting with PRTC.

15. On September 5, 2008, PRW and PRTC met and discussed the DSL service termination date, the Notification and other related issues.

16. On September 9, 2008, PRW sent PRTC by electronic mail and by messenger a letter warning them of the urgency of the matter, requesting them immediate action and providing them with an alternative proposal. The meeting and the letters, however, did not resolve any of the issues. Therefore, the issues have become urgent and require an expedient and urgent action from this Honorable Board.

17. If PRTC is not stopped, after October 1, 2008, PRTC will take the more than 1,300 ISP clients from PRW without the consent and authorization of such clients. Moreover, some of PRW's 1,300 Internet clients that PRTC will takeover as their ISP have ISP contractual agreements with PRW. Abrupt termination of the DSL service will disrupt operations and result in monetary losses to these PRW clients.

18. By sending the Notification and terminating the DSL service without an adequate advance notice, PRTC is tortiously interfering with PRW's contracts and commercial relationships with PRW's ISP clients.

19. The thirty (30) days notice provided to PRW before PRTC terminates its DSL transmission common carrier service is unreasonable, anticompetitive, and illegal.

20. The Federal Communications Commission's Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33 and 01-337, released on September 23, 2005, FCC 05-150 ("Wireline Broadband Order") requires a reasonable notification to "avoid unnecessary customer disruption." *Id.* at ¶ 99. Specifically, the Wireline Broadband Order states that "to protect these customers against abrupt termination of service, we require that a carrier discontinuing common carrier broadband Internet access transmission service shall provide affected customers with advance notice of discontinuance." *Id.* at ¶ 101. "Advance notice of discontinuance" does not mean 30 days notice. Actually, the Wireline Broadband Order implies that the advance notice should be more than 30 days because it states that PRTC must notify the FCC "on or after the date it provides the advance notice to its customers and at least 30 days prior to the date of which the service will be discontinued." *Id.*

21. Thirty (30) days is not sufficient time to protect PRW and its 1,300 customers against "abrupt termination of service."

22. If PRTC continues with its plan to discontinue DSL transmission common carrier service to PRW and its 1,300 Internet clients, many service disruptions and technical problems will occur to many of the 1,300 PRW's Internet clients.

23. The lack of a reasonable and adequate notice will cause and is causing substantial irreparable damages to PRW's goodwill and reputation and loss of clients.

24. PRW is losing Internet clients since PRTC send the Notification. Many customers have implied that the discontinuance of the DSL service will lead to the closing down of the PRW Internet service. The discontinuance has also created uncertainties among PRW's staff regarding their continued employment with the company.

25. Some of the technical and service disruptions PRW's foresees because of PRTC's discontinuance of DSL service include but are not limited to the following:

A. PRTC has not provided a clear migration path from the PRW Internet service to its Internet service. Although PRTC implies that the change will occur automatically on October 1, each of the 1,300 PRW Internet customers would need to be assigned a new username and password as well as a new email address. They can not login to the PRTC network using the existing PRW username and address stored on their DSL modems.

B. An abrupt cutoff of the DSL service could result in major problems to many of the 1,300 PRW Internet customers like the loss of their email address. Many customers use their PRW email address as their primary contact address. Changing their address to a PRTC email address in such a short time period could disrupt their email service and lead to lost messages.

C. Many of the 1,300 PRW Internet clients will lose email capabilities. Several IP blocks of the PRT network are blacklisted because of lack of proper SPAM controls

and corrective action. Changing their DSL connection to the PRTC network could affect the ability of customers to send email.

D. Many of the 1,300 PRW Internet clients will lose their web space. Some customers use their web space for blogs and other public information services.

E. Many Business DSL accounts could have even greater problems. For example, the loss of their static IP address. The PRTC Notification makes no provisions for the assignment of static IP addresses on business accounts and the impact on their monthly fees. The static address of a business account is typically used for web services including email and virtual private networks (VPNs) for remote access. A change in the static IP address that is not properly coordinated could disrupt operations and result in monetary losses to such business clients.

F. PRW business clients will also lose special connectivity features. Several PRW business accounts take advantage of special connectivity features such as custom router setups, filtering, remote access, custom DNS and others. PRTC's Notification, however, makes no provisions for handling special features on business accounts. Loss of these features could significantly diminish the functionality of a business DSL connection.

G. PRW business clients will also lose their webhosting service. PRTC's Notification does not make any provisions for the handling of webhosting services. PRTC's webhosting accounts lack significant functionality when compared to PRW's webhosting accounts.

H. The uncoordinated discontinuance of the DSL service will create multiple billing problems for all the 1,300 PRW Internet clients. Complicated billing adjustments would have to be made to each and every client. Because service cycles for many accounts do not start on the first of the month, adjustments and refunds will be required for those clients.

26. The current situation is an urgent matter to PRW and its own survival as an ISP entity in Puerto Rico hinges in PRTC's illegal decision to discontinue the DSL transmission common carrier services on October 1, 2008 without a proper and adequate advance notification.

COUNT I
(Emergency Relief)

27. PRW repeats, restates, and reiterates each and every allegation contained in Paragraphs 1 through 22, inclusive, as if fully set forth herein.

28. PRTC intends to discontinue its DSL transmission common carrier services in Puerto Rico on October 1, 2008.

29. PRTC has only provided PRW with 30 days to migrate its 1,300 Internet clients to another broadband network and if this migration is not performed within this limited period PRW will lose its 1,300 Internet clients and PRTC will takeover most if not all of PRW's Internet clients without their consent.

30. The 30 days notice provided by PRTC for termination of the DSL service is not only unreasonable and impracticable but it is also illegal and anticompetitive.

31. PRW needs at least until January 1, 2009 to do a proper and adequate migration of all of its 1,300 Internet clients, otherwise it will not only loose the customers but PRW's reputation and goodwill in Puerto Rico will be forever destroyed.

32. The termination of PRTC's DSL transmission common carrier service on October 1, 2008, would result in irreparable injury to PRW. This is the case, because undoubtedly such discontinuance of service would result in the total elimination of all of PRW's Internet clients in Puerto Rico (about 1,300 clients) as such termination of service did not provide sufficient time for PRW to migrate its Internet clients to a separate broadband network provider.

33. PRTC intends to transfer most if not all of PRW's Internet clients to its DMAX service, thereby interfering with dozens of agreements between PRW and its Internet clients.

34. The termination of DSL transmission common carrier service without an adequate transition and migration period will cause significant irreparable damages to PRW's goodwill and reputation in Puerto Rico because PRW's 1,300 Internet clients would suffer disruptions in their service and detrimental changes of email accounts, rates and services.

35. Accordingly, PRW respectfully submits that the present case constitutes an emergency situation that requires immediate Board attention and an emergency order and preliminary injunctive order prohibiting PRTC from terminating the DSL transmission common carrier service until January 1, 2009, at least to PRW and its Internet clients, pursuant to Rule 9 of this Board's General Practice and Procedures Regulations and the Board's cease and desist powers of Act 213.

CONCLUSION AND PRAYER

WHEREFORE, PRW respectfully requests that this Honorable Board issue an emergency relief order: (1) prohibiting PRTC from discontinuing its DSL transmission common carrier service, at least to PRW and its ISP clients, until January 1, 2009; and (2) directing PRTC to amend the Notification or send a second notification specifically informing all of PRW's clients all the options they have before the termination of the DSL service, including staying with PRW as their ISP with an alternative DSL access service provider.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of September 2008.

PUERTO RICO WEBMASTERS

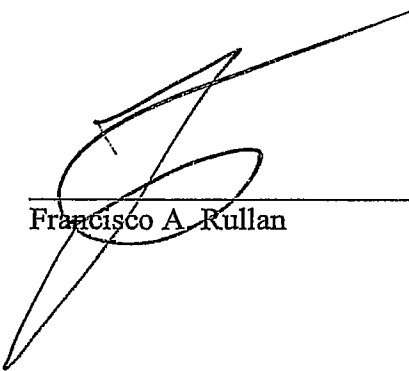
By: 

Francisco A. Rullán
Puerto Rico Bar No. 13202
Gray Robinson, PA
401 E. Las Olas Boulevard
1850 P.O. Box 2328 (33303-9998)
Fort Lauderdale, FL 33301
Tel. (954) 761-8111
Fax (954) 761-8112
frullan@gray-robinson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Complaint for Emergency Relief were delivered on September 15, 2008, by Federal Express next day delivery service and by electronic mail, to the following:

Francisco Silva Salcedo, Esq.
Walter Arroyo, Esq.
Puerto Rico Telephone Company, Inc.
1515 Roosevelt Avenue, 10th Floor
Caparra Heights, Puerto Rico 00921



Francisco A. Rullan

August 29, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket No. 02-33 – Notice of Discontinuance of Common Carrier
Broadband Internet Access Transmission Service**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC") currently provides to its retail customers Digital Subscriber Line (DSL) access service as a facilities-based wireline broadband Internet access transmission common carrier.

Pursuant to 47 C.F.R. §63.71 and to the Federal Communication Commission's Report and Order and Notice of Proposed Rulemaking CC Docket Nos. 02-33 and 01-337 released on September 23, 2005, FCC 05-150 ("Wireline Broadband Order"), PRTC is required to file a notice of its intent to discontinue providing existing customers the common carrier broadband Internet access transmission services. By this letter and pursuant to the aforementioned, PRTC hereby notify the Commission that PRTC intends to discontinue offering DSL service on a common carriage basis effective on October 1, 2008 ("the effective date"). Consequently, after the effective date, PRTC will offer this service solely as a private carrier. By this change, the affected geographic areas include all the service territory of PRTC throughout the Commonwealth of Puerto Rico where DSL is available.

PRTC's price cap tariffs are in effect since July 1, 2008. Nevertheless, PRTC currently offers DSL over 512/256 kbps speed for broadband Internet access transmission on a permissively non-tariffed basis since August 1, 2006. Likewise, until November 16, 2007, PRTC offered DSL at 128/64 kbps speed under a grandfathered tariff basis from its FCC No. 1 Tariff.

After the effective date, PRTC will provide to existing DSL customers its current wireline broadband Internet access offering, commercially known as DMAX. Therefore, by this action the broadband Internet access will not be disrupted to those customers. The

Marlene Dortch, Secretary
August 29, 2008
Page 2

terms and conditions under which PRTC offers DMAX are available on PRTC's website at www.telefonicapr.com and are also available for public inspection at PRTC's main corporate offices located at 1515 Roosevelt Avenue, Guaynabo, Puerto Rico 00968.

On August 28, 2008, PRTC sent a notification by means of U.S. Mail to all affected customers. A sample copy of the notification sent is attached.

A copy of this notice is also being sent to the Special Assistant for Telecommunications at the Department of Defense, the Governor of the Commonwealth of Puerto Rico, and the Telecommunications Regulatory Board of Puerto Rico.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Walter Arroyo-Carrasquillo', with a stylized flourish at the end.

/s/ Walter Arroyo-Carrasquillo
Walter Arroyo-Carrasquillo,
Regulatory and Government Affairs Director
Puerto Rico Telephone Company, Inc.

Enclosure


CERTIFICATE OF SERVICE

I, Carlos D. Ruiz-Mantilla hereby certify that true and correct copies of the forgoing Notice of Discontinuance of Common Carrier Broadband Internet Access Transmission Service were served this 29th day of August, 2008, by first class mail postage prepaid, to the following:

Secretary of Defense
Attn: Special Assistant for Telecommunications
Pentagon
Washington, D.C. 20301

Governor Aníbal Acevedo Vilá
La Fortaleza
San Juan, Puerto Rico 00902-0082

Telecommunications Regulatory Board of Puerto Rico
Capitol Center II Bldg.
235 Arterial Hostos Avenue
Suite 1001
San Juan, Puerto Rico 00918-1453



is Carlos D. Ruiz-Mantilla
Carlos D. Ruiz-Mantilla

28 de agosto de 2008

[Nombre]
[Dirección 1]
[Dirección 2]

Estimado Cliente:

¡Buenas noticias para usted, una oferta difícil de resistir! Como cliente de DMAX, ahora podrá obtener nuestro servicio de DSL (banda ancha) e Internet con el doble de velocidad – **1 Mega** – por tan sólo **\$24.95** al mes por los primeros 3 meses. Además, continuará con todos los beneficios que le ofrece **DMAX**, incluyendo 2 cuentas de correo electrónico y capacidad de almacenaje para páginas de Internet de 10 Mega. También cuenta con **PhoneMAX**, una segunda línea telefónica virtual, sin costo que le ofrece llamadas ilimitadas a toda la Isla gratis, llamadas a EE.UU. a 5¢ el minuto, y más.

A partir del 1ro. de octubre de 2008, PRT será su proveedor de DMAX. El precio a pagar si es cliente de DMAX 512 es \$24.95 y podrá disfrutar de 1 Mega de velocidad por los primeros tres meses. Si actualmente es cliente de DMAX 1 Mega, pagará \$24.95 en oferta por los primeros tres meses. Visite nuestra página www.telefonica.pr.com o comuníquese al (787) 775-0000 para más información sobre nuestra variada gama de servicios de telecomunicaciones.

Los clientes con DMAX 2 Mega pagarán \$59.95 y DMAX 5 Mega \$84.95 a partir del 1ro. de octubre de 2008.

Esta oferta surge a consecuencia de que Puerto Rico Telephone, conforme a la reglamentación federal vigente, discontinuará su ofrecimiento de transporte de banda ancha o DSL ("Digital Subscriber Line", por sus siglas en inglés) como un acarreador común, efectivo el 1 de octubre de 2008. A partir de esta fecha, se ofrecerá el servicio de acceso al Internet de banda ancha ("Broadband Internet Access", por sus siglas en inglés) como un acarreador privado. Dicho servicio incluye el transporte de banda ancha y el acceso al Internet como un solo servicio conocido comercialmente como DMAX. El área geográfica afectada por este cambio cubrirá a todo Puerto Rico, en los lugares donde el servicio de DSL está disponible.

Recuerde que en Puerto Rico Telephone estamos para servirle. Manténgase conectado siempre con **DMAX** de PRT.

Cordialmente,

Puerto Rico Telephone
Ave. Roosevelt #1515
Guaynabo, Puerto Rico 00968

Términos y condiciones en www.telefonica.pr.com

P.O. Box 360998, San Juan Puerto Rico 00936-0998

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**COMMONWEALTH OF PUERTO RICO
PUERTO RICO TELECOMMUNICATIONS REGULATORY BOARD**

ENGINEERING SUPPORT SYSTEMS, INC. d/b/a
PUERTO RICO WEBMASTERS,

Plaintiff

v.

PUERTO RICO TELEPHONE COMPANY, INC.,

Defendant.

Complaint No. JRT-2008-Q- 0095

Re: EMERGENCY RELIEF AND
PRELIMINARY INJUNCTION

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REGULATORIA
DE TELECOMUNICACIONES
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**PUERTO RICO WEBMASTERS' MEMORANDUM OF LAW IN
SUPPORT OF REQUEST FOR EMERGENCY ORDER AND
TEMPORARY INJUNCTION**

TO THE HONORBLE BOARD:

COMES NOW Engineering Support Systems, Inc. d/b/a Puerto Rico WebMasters ("PRW"), by and through its undersigned counsel, and pursuant to Chapter II, Sections 7(b)(3) and (f) of Law 213 of September 12th, 1996 (the "Puerto Rico Telecommunications Act" or "Law 213"), 27 L.P.R.A. § 267f, and Rule 9 of this Telecommunications Regulatory Board's (the "Board") General Practice and Procedure Regulation hereby respectfully submits this memorandum of law (the "Memorandum") in support of its request for emergency order requesting a temporary postponement or temporary injunction of Puerto Rico Telephone Company, Inc.'s ("PRTC") unilateral termination of its DSL transmission common carrier service in Puerto Rico.

PRTC has scheduled to terminate its DSL transmission common carrier services on October 1, 2008, which will result in the effective and unwarranted disconnection of PRW's

1,300 Internet customers, a takeover by PRTC of such 1,300 Internet customers, and the destruction of PRW's goodwill and reputation. See Exhibits A and B. PRW hereby seeks an emergency order requesting a temporary postponement or temporary injunction prohibiting PRTC from terminating such service for a period of at least four (4) months or until January 1, 2008.

I. INTRODUCTION

This Memorandum is presented in conjunction with the Complaint for Emergency Relief (the "Complaint"), filed by PRW today, September 15, 2008. As explained in the Complaint, this action arises from PRTC's recent decision to unilaterally terminate on October 1, 2008 the DSL transmission common carrier services provided in Puerto Rico. PRW seeks a four (4) month transition period to properly migrate its Internet clients to another broadband network.

In its Complaint, PRW seeks that this Telecommunications Regulatory Board (the "Board") issue an emergency order pursuant to Rule 9 of this Board's General Practice and Procedure Regulations, postponing PRTC's termination of DSL common carrier services for four (4) months (until January 1, 2009) or prohibiting PRTC from terminating such services for a transition period of four (4) months. This Memorandum is filed in support of PRW's request for an emergency order.

PRTC intends to discontinue its DSL transmission common carrier services in Puerto Rico on October 1, 2008. PRTC has only provided PRW with 30 days to migrate its 1,300 Internet clients to another broadband network and if this migration is not performed within this limited period PRW will lose these clients. The 30 days notice is not only unreasonable and impracticable but it is also illegal and anticompetitive. PRW needs at least four (4) months to do a proper and adequate migration of all of its 1,300 Internet clients. Otherwise, it will not only

loose the customers but PRW's reputation and goodwill in Puerto Rico will be forever destroyed. Moreover, on October 1, 2008 PRTC will illegally takeover all of PRW's ISP clients not migrated to another broadband network.

II. ARGUMENT

A. **THE LEGAL REQUIREMENTS FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION ARE CLEARLY SATISFIED IN THIS CASE**

1. The legal standard for a preliminary injunction.

Puerto Rico law requires that five criteria be evaluated before granting a preliminary injunction under Puerto Rico Rule of Civil Procedure 56, 32 L.P.R.A. Ap. III R. 56.¹ These criteria are: (1) the nature of the damages that may be caused to each party if the injunction is granted or denied; (2) the irreparability of those damages or the existence of an adequate remedy in law; (3) the movant's probability of success on the merits; (4) the probability that the matter may become moot if the injunction is not issued; and (5) the possible impact on the public interest of the requested relief. See, PRTC v. Tribunal Superior, 103 D.P.R. 200, 202 (1975); and A.P.R.R. v. Tribunal Superior, 103 D.P.R. 903, 906 (1975). See also, In the Matter of WorldNet Telecommunications, Inc. Re: Petition for Arbitration, Docket No. JRT-2003-AR-0001 (TRB June 25, 2004) at 2 (evaluating standards for issuance of a stay); and, Resolution and Order, IslaNet Communications, Inc. v PRTC, Case No. JRT-2003-Q-0086 (June 17, 2003).

2. PRW will suffer irreparable harm if PRTC is allowed to terminate its DSL Transmission Common Carrier Service on October 1, 2008.

"Irreparable harm" is a specific type of harm - the kind for which monetary damages cannot provide adequate compensation. See, Loiza Sugar Company vs. Hernaiz, 32 D.P.R. 903,

¹ Although this Board is not bound by the injunctive relief analysis developed by the Puerto Rico Supreme Court in evaluating whether or not to issue emergency relief under Rule 9 of its General Practice and Procedure Regulation, this Board has utilized such analysis in the past when considering requests for emergency relief pursuant to such Rule.

904 (1924); Puerto Rico Conservation Foundation v. Larson, 797 F. Supp. 1066, 1069 (D.P.R. 1992). Loss of customers, loss of reputation and loss of goodwill - the kinds of injury that PRTC's expedient termination of its DSL common carrier service would cause PRW - have been judicially recognized as forms of "irreparable harm." See, Ross-Simons of Warwick v. Baccarat, Inc., 102 F3 12, 19-20 (1st Cir. 1996) (unquantifiable loss of revenue, loss of goodwill and damage to reputation are all "irreparable injury"); Multi-channel TV Cable Co. v. Charlottesville Quality Cable Co., 22 F. 3d 546, 552 (4th Cir. 1994) (threat of permanent loss of customers and loss of goodwill supports a finding of irreparable harm); Chartwell Communications Group v. Westbrook, 637 F. 2d 459, 467 (6th Cir. 1980) ("the irretrievable loss of subscribers constitutes irreparable damage entitling plaintiffs to injunctive relief"); Lee Wilson, Inc. v. General Electric, 222 F. 2d 850, 853 (1st Cir. 1955) ("the unlawful acts of the defendant, past and threatened, have caused and threaten to cause irreparable damage to plaintiff and tend to impair and destroy plaintiff's goodwill"); Cable T.V. Fund 14-A Ltd. v. Property Owners Ass'n Ranch Estates, Inc., 706 F. Supp. 422, 433 (D. Md. 1989) ("if preliminary relief is not granted, Centel will incur indeterminable additional costs, will lose indeterminable customers, revenues, profits, and will suffer irreparable damage to its reputation and goodwill"); Subscription Television of Greater Washington v. Kauffman, 606 F. Supp. 1540 (D. D.C. 1985) ("an irreparable injury is being inflicted on plaintiff's ability to retain existing subscribers, to enlist new subscribers, to acquire suitable programming, and to remain in the STV business").

Another court has focused on a situation very similar to what could occur here and has found it to be irreparable injury:

The loss of customers and sales and the threat of the continuation of such losses to a legitimate business interest is sufficient to show plaintiff will suffer irreparable injury.

. . . . The loss of a competitive position is an intangible but real damage not readily measurable, and, therefore, the harm suffered by the plaintiffs cannot be adequately remedied in law. . . .

Petrzilka v. Gorscak, 556 N.E. 2d 1265, 1268 (Ill. App. 1990). The Illinois court further found that "the lost profits arising from potential sales are incapable of adequate compensation, and thus money damages are not an adequate remedy." *Id.* See also, Centel Cable Television Company of Florida v. Thos I. White Development Corp., 1989 U.S. Dist. LEXIS 19064, *36 (D. Fla.) ("Centel") ("Elimination from the market place cannot be compensated in monetary damages. . . . It is very difficult, if not impossible, to compute the damages of loss of marketing sales, loss of goodwill, loss of business reputation and the loss of profits from an indeterminable number of customers") and Cable T.V. Fund 14-A Ltd., 706 F. Supp. 422, 433 (D. Md. 1989) ("Were plaintiff to then ultimately prevail on the merits it would be difficult, if not impossible, to determine how many subscribers plaintiff could have obtained had it been allowed to compete within the Estates. Immeasurable harm to plaintiff's reputation and goodwill would result if it became known to the residents that plaintiff was not being permitted to provide cable service to the Estates at the present time").

As the First Circuit wrote in Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 217 F.3d 8 (1st Cir. 2000): "It is settled beyond peradventure that irreparable harm can consist of 'a substantial injury that is not accurately measurable or adequately compensable by money damages.' Ross-Simons I, [Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12 (1st Cir. 1996)] 102 F.3d at 19." In Ross-Simons of Warwick, the First Circuit held that the loss of goodwill enjoyed by a retail store which resulted from the discontinuance of one of its product suppliers was enough to support the grant of a preliminary injunction against such discontinuance. Similarly, the U.S. District Court for the District of Puerto Rico granted a

mandatory injunction against a shopping center developer because the developer's proposed relocation of certain stores would "visually obstruct" the plaintiff's store, degrading the "presentation of the store to the public." K-Mart Corp. v. Oriental Plaza, Inc., 694 F. Supp. 1010 (D.P.R. 1998). In affirming this Court's decision, the First Circuit wrote: "[H]arm to goodwill, like harm to reputation, is the type of harm not readily measurable or fully compensable in damages- and for that reason, more likely to be found 'irreparable.' . . . Beyond goodwill, the loss of revenues resulting from considerations such as diminished visibility, restricted access, less commodious parking, and the like are sufficiently problematic as to defy precise dollar quantification." K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907 (1st Cir. 1989). It is precisely these significant, but unquantifiable irreparable harms that PRTC's scheduled October 1, 2008 termination of DSL services will inflict here – lost customers, lost opportunities, diminished goodwill.

In a telecommunications case involving both competitive and incumbent providers, the competitive situation between the incumbent and the competitive providers led a district court to enjoin a state utility commission's directive that the incumbent provider continue to provide competitive carriers with certain "unbundled network elements" at low cost, despite the FCC's decision that incumbent providers no longer were required to do so. BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, LLC, 425 F.3d 964 (11th Cir. 2005). The Eleventh Circuit wrote, "[T]he CLECs [competitive providers] are clinging to the former regulatory regime in an attempt to cram in as many new customers as possible before they are forced to bow to the inevitable. . . BellSouth faced the loss of customers due to the order of the Commission. Although economic losses alone do not justify a preliminary

injunction, 'the loss of customers and goodwill is an irreparable injury.'" MCIMetro Access, citation omitted.

In the case at hand, it is clear that the termination of PRTC's DSL transmission common carrier service on October 1, 2008, would result in irreparable injury to PRW. This is the case, because undoubtedly such discontinuance of service would result in the total elimination of all of PRW's Internet clients in Puerto Rico (about 1,300 clients) as such termination of service did not provide sufficient time for PRW to migrate its Internet clients to a separate broadband network provider. See Jesus Alvarez Affidavit, Exhibit B. Moreover, PRTC intends to transfer most if not all of PRW's Internet clients to its DMAX service, thereby interfering with dozens of agreements between PRW and its Internet clients. Id. Furthermore, such termination of DSL transmission common carrier service without an adequate transition and migration period will cause significant damages to PRW's goodwill and reputation in Puerto Rico because PRW's 1,300 Internet clients would suffer disruptions in their service and detrimental changes of email accounts, rates and services. Id. Consequently, it is evident that PRTC's termination of the DSL transmission common carrier service in October 1, 2008 would result in loss of customers, reputation and goodwill, all of which, as previously stated, have been judicially recognized as forms of irreparable harm. Also, as stated above, the losses that PRW would suffer as the result of the termination of DSL transmission common carrier service would be clearly not measurable, making such loss very difficult if not impossible to quantify and compensate through monetary damages. This, by itself, makes such damages irreparable pursuant to the above referenced case law.

3. There is a substantial likelihood that PRW will prevail on its claims.

PRW submits that the facts present in this case validate PRW's claims and that it is more than likely that PRW will prevail on the merits of this case. See Jesús M. Alvarez's affidavit at Exhibit B.

PRW started providing Internet access services as an ISP in Puerto Rico in April, 1998 to both business and residential customers. PRW currently offers DSL, leased line and dialup connectivity to the Internet. Because transport services are required for its Internet access offerings, PRW maintains multiple relationships with local telecommunications companies. In April, 2004, PRW started a business relationship with PRTC that allows it to provision DSL transport for its customers. Currently PRW has a "channel" code assigned on the PRTC DSL "channels" web site that allows PRW to enter DSL transport orders with PRTC on behalf of its Internet access customers. These orders are typically completed in seven to ten days when the customer receives a DSL modem from PRTC. After the service is activated, PRTC bills the DSL transport to PRW customers directly on their monthly telephone bill. As part of this business arrangement, PRW is also required to pay a DS3 link to the PRTC ATM network at a monthly cost of \$3,996. PRW bills its customers separately for the Internet access service. This "channel" relationship converts PRW into a de facto DSL agent of PRTC because PRW sells and activates for its customers PRTC's DSL transmission services for them to be able to use the PRW Internet access.

Recently, PRW received a letter from PRTC dated August 29, 2008, whereby PRTC informs that effective October 1, 2008, PRTC will cease offering to its retail customers DSL access service as a facilities-based wireline broadband Internet access transmission "common carrier." PRTC's letter effectively gave PRW a 30 day notice for the termination of the DSL

service it has provided PRW for the past four (4) years. Moreover, PRTC sent a notification dated August 28, 2008 to approximately 1,300 of PRW's DSL Internet clients ("Notification") informing them that effective October 1, 2008, PRTC will move all DSL accounts to DMAX service and that PRTC will also become its Internet Service Provider ("ISP"). In other words, the notice to PRW's clients implicitly states that PRW will not provide them Internet service anymore and that PRTC is taking over the ISP service. Furthermore, PRTC did not communicate or coordinate with PRW before sending the Notification to PRW's 1,300 Internet clients.

On September 2, 2008, PRW wrote a letter to PRTC whereby it objected to the limited and unreasonable timeframe provided for the termination of DSL transport service and the Notification, and requested a meeting with PRTC. On September 5, 2008, PRW and PRTC met and discussed some of the issues. On September 9, 2008, PRW sent PRTC by electronic mail and by messenger a letter warning them of the urgency of the matter, requesting them immediate action and providing them with an alternative proposal. The meeting and the letters, however, did not resolve any of the issues. Therefore, the issues have become urgent and require an expedient and urgent action from this Honorable Board.

Regarding the Notification, such notice is clearly illegal. PRTC simply cannot just take the more than 1,300 ISP clients from PRW without the consent and authorization of such clients. Moreover, some of PRW's 1,300 Internet clients that PRTC will takeover as their ISP have ISP contractual agreements with PRW. Abrupt termination of the service will disrupt operations and result in monetary losses to those clients. PRTC is, therefore, tortiously interfering with PRW's contracts and commercial relationships.